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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:)	Docket No. CAA-016-1998
)	
Cohen Industrial Scrap)	
Processors,)	Proceeding Under
)	Section 113(d)
)	of the Clean Air Act,
)	42 U.S.C. § 7413(d).
<u>Respondent.</u>)	

CONSENT AGREEMENT AND CONSENT ORDER

Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, instituted this civil administrative proceeding pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22.

I. PRELIMINARY STATEMENT

1. Respondent, Cohen Industrial Scrap Processors (Cohen), is an Ohio corporation with its principal place of business in Cincinnati, Ohio.

2. On July 31, 1998, Complainant initiated this proceeding by filing an Administrative Complaint and Notice of Proposed Order (Complaint) against Respondent, alleging violations of Section 608 of the Act, 42 U.S.C. § 7671g, and the implementing regulations at 40 C.F.R. Part 82, Subpart F.

3. The parties agree that the entry of this Consent Agreement and Consent Order (CACO) is an appropriate means of resolving this matter.

II. CONSENT AGREEMENT

Before taking any testimony, without adjudication of any issues of law or fact, the Complainant and Respondent consent to the entry of, and agree to comply with, the terms of this CACO.

4. Respondent admits that U.S.EPA has jurisdiction over this matter. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.

5. Respondent consents to the assessment of the civil penalty provided in the Order, below.

6. Respondent explicitly waives any and all rights under any provisions of law, including those pursuant to Section 113(d)(2) and (4) of the Act, 42 U.S.C. § 7413(d)(2) and (4), to request a hearing and to challenge the terms and conditions of this CACO.

7. U.S.EPA sought in its Complaint a proposed civil penalty of \$105,550. Through this CACO, and in consideration of Respondent's good faith efforts to resolve this matter, its cooperation in providing U.S. EPA with information during the pendency of this matter, the nature of the violations, and other

relevant factors, U.S. EPA agrees to mitigate the proposed civil penalty to \$84,200. This penalty conforms with U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991, the Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service Repair and Disposal of Appliances Containing Refrigerant (June 1, 1994) and the civil penalty provisions in Section 113(d) and (e) of the Act.

8. Respondent shall pay the United States a civil penalty in the amount of \$84,200, which shall be deemed to include interest, as follows. Respondent agrees to pay \$21,050 to U.S. EPA within thirty (30) days of the date that U.S. EPA files a fully executed copy of this CACO with the Regional Hearing Clerk. Respondent agrees to make three subsequent quarterly payments of \$21,050 each to U.S.EPA on or before the dates three, six and nine months after the first payment.

9. The civil penalty specified in paragraph 8 shall be paid by certified or cashier's check or money order, payable to "Treasurer, United States of America," and mailed to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

A transmittal letter, indicating the name of, complete address, and the case docket number must accompany the payment. The case docket number shall also be included on the face of the check.

The Respondent shall send a copy of the check and transmittal letter to:

Regional Hearing Clerk
United States Environmental Protection Agency,
Region 5
77 West Jackson Blvd. (MF-10J)
Chicago, Illinois 60604-3590

Joseph Cardile
Air and Radiation Division
United States Environmental Protection Agency,
Region 5
77 West Jackson Blvd. (AE-17J)
Chicago, Illinois 60604-3590

Louise Gross
Office of Regional Counsel
United States Environmental Protection Agency,
Region 5
77 West Jackson Blvd. (C-14J)
Chicago, Illinois 60604-3590

10. Respondent's failure to comply with the penalty payment provisions of paragraph 8 of this CACO may subject Respondent to a civil action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the civil penalty, together with interest, handling charges, and nonpayment penalties as set forth in Paragraph 11, below. In any such collection action, the validity, amount, and appropriateness of the penalty assessed hereunder and the terms of this Order are not subject to review.

11. Pursuant to 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3731, Respondent shall pay the following amounts if the civil penalty specified in paragraph 8 is not paid pursuant to the terms of this CACO:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) and shall begin to accrue after thirty (30) days following the date that U.S. EPA files a fully executed copy of this CACO with the Regional Hearing Clerk, if Respondent fails to comply with the requirements of Paragraphs 9 and 10.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid for each month that any portion of the assessed penalty is more than 30 days past due.

c. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the full amount due under this CACO, including interest and handling charges, the Respondent shall pay the United States' enforcement and collection expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's overdue penalties and nonpayment penalties accrued from the beginning of such quarter.

12. Respondent certifies that it is now in compliance with Section 608 of the Act, 42 U.S.C. §7671g, and the requirements of 40 C.F.R. Part 82, Subpart F, at any and all scrap disposal facilities that it owns or operates.

13. The parties agree that the entry of this CACO is an appropriate means of resolving this matter. The parties further agree that such resolution is in full and complete settlement of any and all violations which are alleged or could have been alleged in the Complaint as arising out of those activities of Respondent which are the subject of the Complaint, or of which U.S. EPA is aware.

14. Nothing in this CACO shall relieve Respondent of its duty to comply with all applicable provisions of the Act and other Federal, State or local laws or statutes or shall restrict U.S. EPA's authority to seek compliance with all applicable provisions of the Act and other applicable laws or regulations. This CACO resolves only past administrative civil liability related to this proceeding, and nothing herein shall limit the United States from seeking penalties for past or future criminal conduct, civil and criminal forfeiture, and penalties for future civil liability. The parties waive any arguments that they may have that this CACO or the proceeding to date determines any claim, issue, right, defense or privilege in any subsequent criminal prosecution or proceeding for civil or criminal forfeiture. Cohen expressly waives its right to rely upon this CACO as a Double Jeopardy clause defense to any subsequent forfeiture proceeding or criminal prosecution. This paragraph shall survive termination of the CACO.

15. Respondent enters into this CACO solely for the purpose of resolving this matter and does not admit any particular fact, conclusion of law or liability concerning the claims or violations set forth in the Complaint.

16. The provisions of this CACO shall be binding on the Respondent and its successors and assigns.

17. Each party shall bear its own costs, fees and disbursements in this action.

18. The Respondent certifies that it is duly authorized to execute this CACO and that the party signing this CACO on Respondent's behalf is duly authorized to bind Respondent to the terms of this document.

19. The parties agree to issuance of the accompanying Consent Order.

20. With respect to the Complaint filed in this matter, this CACO constitutes the entire agreement between the parties.

21. Except as provided in paragraph 14, this CACO shall terminate automatically upon payment by Respondent of the penalty in accordance with paragraphs 8 and 9.

In the Matter of: Cohen Industrial Scrap Processors,
Docket No. CAA-016-1998

Hereby Stipulated, Agreed, and Approved for Entry:

U.S. Environmental Protection
Agency, Complainant

Date: 3/4/99

By: Steve Rothblatt

Richard C. Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Cohen Industrial Scrap, Inc.,
Respondent

Date: 2-9-99

By: Isaiah Goldenberg V.P.


Cohen Industrial Scrap Processors

CONSENT ORDER

The Respondent and Complainant are hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement, effective immediately upon filing of the Consent Agreement and this Consent Order with the Regional Hearing Clerk. This Order fully disposes of this matter and all issues in the Complaint as to Respondent and others in accordance with the foregoing Consent Agreement,

pursuant to 40 C.F.R. § 22.18(c).

Date: 3/5/99

for 

David Billich
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5

In the Matter of Cohen Industrial Scrap Processors,

CERTIFICATE OF SERVICE

I hereby certify that a copy of the COSENT AGREEMENT AND
CONSENT ORDER was sent via certified mail, return receipt
requested, to the respondent by placing it in the custody of
the United States Postal Service addressed as follows:

Isadore Goldenberg, Vice-President
Cohen Industrial Scrap Processors
990 West 5th Street
Cincinnati, Ohio 45203

Gary Baise
Baise, Miller & Freer, PC
815 Connecticut Ave, NW
Suite 620
Washington, DC 20006

The original and a copy was hand-delivered and filed with:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

3/11/99
Date

Shwanda Mayo
Shwanda Mayo, Secretary
AECAS (MN/OH)

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REGIONAL HEARING
CLERK
MAR 11 1999
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PROTECTIVE
REGION 5

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